

3. As they pursued their appeal, Defendants sought a stay of execution and enforcement of the Court's judgment, and Defendants offered a deposit of \$1.5 million to be placed in escrow as security under Fed. R. Civ. P. 62(b).

4. The Court approved the \$1.5 million deposit and stayed execution of its judgment in a Consent Order entered on February 16, 2021.

5. Defendants' appeal to the Federal Circuit proceeded. On February 10, 2022, the Federal Circuit issued a precedential opinion reversing this Court's judgment. *See Junker v. Medical Components, Inc.*, ___ F. 4th ___, No. 21-1649 (Fed. Cir. Feb. 10, 2022) (slip op.) (attached as Exhibit A).

6. Importantly, the Federal Circuit did not remand for further proceedings. Rather, the Federal Circuit entered judgment in favor of Defendants. *See Junker v. Medical Components, Inc.*, No. 21-1649, at ECF 54 (attached as Exhibit B).

7. Thus, there is no longer any judgment against Defendants in this matter. To the contrary, judgment has been entered against Plaintiff.

8. As such, Defendants are not responsible under Fed. R. Civ. P. 62(b) for securing any funds against enforcement of any judgment. If any party were to seek a stay of enforcement or execution of the operable judgment in this case, it would be Plaintiff.

9. Also, if any further appeal is to be taken from the judgment entered in this case, it would be an appeal by Plaintiff, whose only recourse is to seek either a panel rehearing or rehearing *en banc* at the Federal Circuit, or to file a petition for certiorari with the Supreme Court of the United States.

10. Notably, this means all of Plaintiff's remaining avenues of appeal are by permission, not by right. Indeed, even if Plaintiff seeks rehearing at the Federal Circuit, Defendants need not respond unless the Federal Circuit so orders.

11. With judgment now entered against Plaintiff and no further appeals by right available to him, no justification for the Court's retention of the funds remains.¹ They should be released to Defendants.

WHEREFORE, Defendants respectfully request this Honorable Court to enter an Order releasing the \$1.5 million currently held in escrow, and any interest accrued thereon, and directing such funds to be immediately returned to Defendants.

Respectfully submitted,

Dated: February 18, 2022

/s/ Joseph C. Monahan

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¹ Consistent with an email Plaintiff's counsel sent to the Court on February 14, 2022, Defendants anticipate Plaintiff will claim a purported "circuit split" cuts in favor of his chances at either a panel rehearing, a rehearing *en banc*, or a grant of certiorari by the Supreme Court. Such claim is manifestly specious, where the Federal Circuit is the only circuit with jurisdiction over questions of patent law. To the extent Plaintiff believes there is a circuit split over general contract law, he likewise misses the mark, as contract law is a matter of state law.

CERTIFICATE OF SERVICE

I certify that on this 18th day of February, 2022, I filed the foregoing with the Court by CM/ECF, which then served all counsel of record.

/s/ Joseph C. Monahan

Joseph C. Monahan